IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1427 OF 2005

Municipal Coroporation of Gr. Mumbai.
..Petitioner.

Vs.

Smt. Laxmibai M. Oza and anr.
..Respondents.

Mr.A.J.Bhor for the B.M.C.

Mr.Anil Singh h/f Mr,.D.R.Shah for Respondent No.1.

Ms. Priti Shah for Respondent No.2.

CORAM: R.S. MOHITE,J.
DATED :18.11.2005.

P.C.

1. It is noticed that the petition has been filed without challenging the interlocutory order and without making all the defendants as parties. Leave to amend to add the said defendant. Amendment to be carried out forthwith.

2. After the amendment was carried out. the advocate appeared on behalf of the added respondent and waived notice. He undertakes to file vakilpatra within a period of one week from today.

3. Heard both sides.

4. Rule.

5. By consent of the parties, rule made returnable forthwith. This petition has been filed by the Municipal Corporation of Greater Bombay impugning an order dated 7.10.2004 in L.C.Suit No.3150/1999 . By the said order the application of the petitioner to take the written statement on record has been rejected. It appears from the record that, in the suit, notice of motion was being contested. The suit came up on board on 17.9.2004 and was adjourned to 7.10.2004. On 21.9.2004, the petitioner made an application for filing Written statement. It was stated that the written statement could not be filed earlier because of over load. It is noticed that, the evidence in the matter is not yet recorded. The affidavits of examination in chief have been filed by the parties. The Trial Court has observed in the impugned order dated 7.10.2004 that the petitioner is a formal party. This does not appear to be correct position as one of the prayer clause is quashing of the notice issued by the Corporation. I feel that no prejudice will be caused to the plaintiff or defendant No.2 if the written statement of the petitioner is taken on record. In the circumstances, in the interest of justice, the impugned order dated 7.10.2004 is quashed and set aside and it is directed that the petitioner’s written statement shall be taken

on record on or before the next date in the suit. The petitioner is however, liable to pay the cost of Rs.1500/- to the plaintiff. The said cost will be paid by the B.M.C. to the plaintiff either in person or through his advocate on or before the next date. Petition stands disposed of.

(R. S. MOHITE, J.)